

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7182

BILL NUMBER: HB 1554

NOTE PREPARED: Jan 10, 2011

BILL AMENDED:

SUBJECT: Persuasion Polls; False Political Communications.

FIRST AUTHOR: Rep. Grubb

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: No Fiscal Impact

Summary of Legislation: *Persuasion Polls*- The bill defines a "persuasion poll" as a telephone survey that: (1) includes more than 100 calls; (2) references a candidate in any election or caucus; and (3) is designed to provide negative information about a candidate or to influence the person called to vote for or against a candidate. The bill prohibits a person from sponsoring, authorizing, conducting, or administering a persuasion poll unless the caller provides certain information at the beginning and the end of the call. The bill requires that if a candidate's committee neither sponsors nor authorizes a call, the caller must state that the call is not authorized by any candidate or candidate's committee. The bill provides that a persuasion poll telephone call may not be made on the day of an election or within five days immediately preceding an election.

Penalty Provision- The bill makes a violation of these provisions a Class B misdemeanor.

Civil Penalties- The bill provides that a candidate, candidate's committee, regular party committee, political action committee, or legislative caucus committee that sponsors a persuasion poll that violates these provisions is subject to a civil penalty of up to three times the amount expended in sponsoring the poll. The bill provides that a person who authorizes, conducts, or administers a persuasion poll and who violates these provisions must pay a civil penalty of \$50 for each offending call, up to a maximum civil penalty of \$10,000 for each poll conducted, plus any investigative costs incurred.

Penalty Provision- The bill makes it a Class A misdemeanor for a person to intentionally participate in the preparation, dissemination, or broadcast of paid political advertising or campaign material, or in the drafting of a letter to the editor, that: (1) concerns the personal or political character or act of a candidate; and (2) is designed to or tends to elect, injure, promote, or defeat the candidate; if the advertising or campaign material

or the letter contains information or a statement that was false and the person knew of the falsity or acted with reckless disregard as to truth or falsity. The bill exempts a person who merely disseminates or broadcasts the material or letter in the normal course of business.

Forfeiture of Nomination- The bill provides that a candidate for nomination or election to public office (if successful) forfeits the nomination or public office if the candidate commits a violation, unless the candidate's violation was trivial or occurred despite the candidate's good faith.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Persuasion Polls-* The bill makes the Election Division (ED) as the agent of a nonresident making persuasion polls in Indiana. As the agent, the ED would provide service of process in any action or proceeding against the nonresident that would arise from the conduct of a persuasion poll. The ED could see an increase in administrative workload as a result of this provision. The bill does not provide an appropriation. Therefore, the ED would have to provide services to nonresident poll conductors within their existing level of resources.

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

Civil Penalties- If the Election Commission determines a candidate, candidate's committee, regular party committee, political action committee, or legislative caucus committee has sponsored a persuasion poll with calls that violate the bill's provisions, the Commission could assess civil penalties of up to three times the amount expended for the persuasion poll, plus documented investigative expenses incurred by the Election Division. Individuals making calls in violation of the bill could be assessed a civil penalty of \$50 per violating call up not to exceed \$10,000 per poll conducted. Revenue from assessed penalties would be placed in the state Campaign Finance Enforcement Account.

Explanation of Local Expenditures: *Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail. A Class B misdemeanor is punishable by up to 180 days in jail.

Forfeiture of Nomination- Nominated candidates or persons associated with a candidate that are convicted of Class A misdemeanors for false statements as described above would be required by court order to vacate a nomination for the office sought by the candidate.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

Civil Penalties- If the county election board determines a candidate, candidate's committee, regular party committee, or political action committee has sponsored a persuasion poll with calls that violate the bill's provisions, the county election board could assess civil penalties of up to three times the amount expended for the persuasion poll plus documented expenses. Individuals making calls in violation of the bill could be assessed a civil penalty of \$50 per violating call up not to exceed \$10,000 per poll conducted. Revenue from assessed penalties would be placed in the county campaign finance enforcement account.

State Agencies Affected: Election Commission; Election Division.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Chris Baker, 317-232-9851.